



Legal Protection for Public Notary in Legalizing Non-Authentic Deed

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Abstract

This study aims to explain the weight of evidence for a private agreement deed validated by a notary and the type of legal protection afforded to a notary who legalizes a private deed. The normative juridical approach is applied in the preparation of this study. This study applies both primary and secondary legal materials, with the primary legal materials being Law Number 2 of 2014 About the Position of Notary Public and the secondary legal materials being books, scientific papers, journals, and articles pertinent to this study. The results of the study indicate that private deeds that have been legalized by a Notary have complete evidentiary weight, as the truth of private deeds is contained in the parties' signatures. Therefore, by recognizing the signature, the contents of the deed are regarded as the parties' agreement. The formation of a monitoring body in accordance with Article 66 of the Public Notary Profession Act safeguards notaries in their capacity as public servants. If a notary is suspected of committing a breach by creating a document that is harmful to the parties, there is a process and procedure that must be followed before the notary can attend the trial.

Keywords: *Legal Protection; Non-authentic; Notary; Evidencing*

Introduction

Article 1 paragraph 1 of Law Number 2 of 2014 respecting the Position of Notary (hereinafter referred to as UUJN) specifies that a notary is a public official entitled to make valid deeds and has other authorities as specified in this Law or based on other laws. A notary is a public official (*openbaar ambtenaar*) authorized and author authorized deeds, specifically authentic. Therefore, long as authentic deeds made by a notary are not specific to other public officials, a notary can be held liable for his actions, namely making the authentic deed. A notary is required to operate honestly, thoroughly, independently, and impartially when creating a deed, and to preserve the interests of the parties concerned.

Article 1868 of the Civil Code states that an authentic deed is a deed made in a form prescribed by law by/or before a public authority authorized for that purpose, at the location where the deed was executed. Generally, handwritten deeds are not executed in the presence of a notary. If a fraudulent deed is presented before a notary, its status might be transformed into that of a valid deed. In practice, the parties intend to provide the deed under hand to a notary hence if a dispute arises in the future, the deed

under hand made by the parties has substantial evidentiary weight in court. Legalization is one of the stages that transform a private deed into an authentic deed presented to a notary.

In practice, not all processes of legalizing underhanded deeds are brought to the notary run as they should; there is a legal event, namely a dispute between the parties, after the notary's legalization of the underhanded deed; this dispute is then heard in court. Due to the notary's role as an authorized authority in legalizing the deed, he or she is also dragged into court. If it is expressly stated in the UUJN provisions that the notary is not authorized to determine the contents of the private deed, the notary in the legalization process only certifies the signatures of the parties, thereby transforming the parties' underhanded deed into an authentic deed with strong evidentiary powers. Decision number 28/Pdt.G/2019/PN.Bna illustrates the frequent occurrence of legal problems in the legalization process. It stems from the actions of the defendant, who unilaterally allegedly manipulated the plaintiff's signature in the safekeeping agreement on December 10, 2018, and because the co-defendant (the notary who legalized the private deed) was not observant and careful about the birth of the safekeeping agreement on December 10, 2018, was an illegal act that had a real hence it is the plaintiff's damages do not persist, the safekeeping agreement of 10 December 2018 can be revoked or ruled invalid and/or unenforceable under the law.

Then, on the basis of the preceding instance, states that the Notary as the legalizing party may become a party to a dispute over the agreement that occurred without the Notary's consent or desire. The notary's involvement in legal action, specifically legalizing, is limited to transforming an underhanded deed into an authentic deed that can be used as evidence in the event of a dispute between the parties who signed the underhanded deed agreement. The presence of a notary in validating dishonest deeds is restricted to that of an authorized official and not as a party to an agreement between the parties. However, a notary who legalizes an underhanded deed should not be made a party (become a defendant) in a disagreement between the parties to the agreement. A notary is only a legal subject who has the authority to evaluate whether an underhanded deed becomes an authentic deed based on his authority. In this instance, the entity governed by laws and regulations is the Notary Office Law.

The Law on Notary Office has not yet regulated a Notary's authority to legalize a private deed in the event of a dispute between parties bound by a private deed agreement. If this is not addressed, it is possible that a notary will be brought to court as a consequence of a dispute between parties to an agreement in which the notary's jurisdiction is limited to legalizing the agreement without intervening in the process. Making the document by hand hence it cannot be argued that the Notary has performed illegal conduct.

Research Method

This research was prepared using the normative juridical approach, which is a legal procedure including the examination of legal literature or secondary material¹ and Legal concepts, legal systems, legal synchronization, legal history, and comparative law study.² The form and content of library items have been compiled by earlier researchers and can be accessed regardless of time constraints.³

Discussions

A notary is a public official who practices the legal profession, and as such, he or she possesses sufficient professionalism (scientific quality) and moral rectitude. Everyone who has been appointed as a

¹ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Pers, 2001, p. 3-14

² Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Pers, 2001, p. 13.

³ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1986, p. 10.

public notary and taken the oath of office possesses professionalism and moral rectitude. Prudence is one of the most fundamental concepts a notary must adopt or execute in the performance of his duties. A notary is a prestigious position of trust, and in carrying out his duties, he must be thorough or cautious.

Even though it is not explicitly regulated in UUJN, a notary must be cautious not to become involved in conflicts between the parties throughout the legalization process. Arrangements pertaining to the concept of prudence in UUJN in the legalization process, which is the notary's authority, must be strictly regulated hence as not to result in legal complications that bring the notary before the court. Thus, the legal force of a notarized document is not diminished by the absence of formal formalities mandated by statute.

Notaries are authorized to produce authentic written proof explaining the presence of legal events and activities undertaken by an individual or group. In contrast to other governmental authorities, notaries have a neutral posture when carrying out their duties. The presence of a notary is determined by law, namely UUJN, depending on their purpose and role. The presence of a Notary is intended to aid and serve the community in line with the authority delegated to him based on the rule of law thus that the position can be carried out effectively and does not clash with other positions.

The provisions of Article 15 Paragraph 1 UUJN, which stipulate that the notary has the authority to make authentic deeds, confer this authority on the notary:

“The notary has the authority to make authentic deeds regarding all actions, agreements, and stipulations that are required by laws and/or regulations and/or desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, save the deed, and provide gross, copies, and quotations of the deed, so long as the making of the Deed is not also assigned or excluded to other officials or other people determined by law.”

There are two types of deeds: legitimate deeds and private deeds. According to Djamanat Samosir, a deed under the hand is a deed created by interested parties without the assistance of public officials and with the intent to be used as proof.⁴ In the meantime, an authentic deed, according to Philipus M. Hadjon, must satisfy two characteristics in order to be considered an authentic deed:⁵

1. In the manner prescribed by law (standard form)
2. Presented by and to a public official

Legalization is a kind of confirmation for a shady transaction in which the parties sign the deed in the presence of a notary, who then certifies the date of the deed. Previously, in order to legalize a notary, it was necessary to guarantee the permitted parties were present and then to explain and read the document to be legalized. Before signing, the parties themselves must also be familiar with the notary. Article 15 Paragraph 1 verses a, b, c, and d regarding the authority of a notary in the legalization procedure, UUJN specifies as follows:

- a. legalize the signature and determine the certainty of the date by registering the private letter in a special book;
- b. record private letters by registering them in a special book;
- c. make a copy of the original letter privately in the form of a copy containing the description as written and described in the letter concerned.
- d. compare the original letter to the photocopy to ensure its accuracy.;

⁴ Triashari, dkk., “Analisis Yuridis Akta Di Bawah Tangan Yang Di Waarmeking Dan Di Legalisasi” *Kertha Semaya: Journal Ilmu Hukum*, p. 3, 2014.

⁵ Philipus M. Hadjon, *Formulir Pendaftaran Tanah Bukan Akta Autentik*, Surabaya: Surabaya Post, 2001, p. 3.

It is obvious from these clauses that a notary's legalization authority does not extend to the terms of the parties' agreement or contract. As specified in Article 15 paragraph (1), letters a, b, c, and d of the UUJN, notaries exclusively perform the legalization and recording of private documents provided by interested parties.⁶ In practice, the parties' private deed typically takes the form of an agreement or agreement over a specific object, which explains a legal action. Article 1320 of the Civil Code must be complied with in all agreements between parties. Article 1320 of the Civil Code provides that a contract's legal obligations must satisfy four conditions:

1. The understanding of people who tie themselves
2. the capacity to form an alliance
3. particular topic matter, and
4. valid reason.

A secret agreement is a binding agreement between two or more parties (in this case, the plaintiff and the defendant) that is only enforceable between these parties. The notary who ratified the safekeeping agreement between the plaintiff and the defendant is not obligated by the terms of the arrangement. In this instance, the notary solely conformed to the UUJN, where the UUJN requirements do not specifically provide that the notary must examine the contents of the deed under the parties' signatures throughout the legalization process. In addition to conforming to the UUJN in carrying out his/her duties, a notary must also adhere to the provisions of other relevant laws and regulations, as well as societal norms, hence, legal activities carried out by a notary do not cause injury to third parties.

1. The Validity of an Unwritten Contract Notarized by a Notary

The ratification of the letters written privately by the parties is brought to the Notary, who reads and explains the letter's contents before dating, signing, and legalizing it. Consequently, the legalization function of a handwritten document verifies the date and signature of the interested parties. The legalized private deed provides the judge with certainty regarding the date and identity of the parties entering into the agreement, and the signatures affixed under the letter can no longer claim that the parties, or one of the parties, are unaware of the contents of the letter, since the contents were read and explained to the parties before they signed in front of the Notary.

The aim of evidence is the judge's decision based on the facts presented.⁷ Article 1868 of the Civil Code defines an authentic deed as a deed executed in the manner prescribed by law by or before an authorized public official at the location where the deed was executed. Legalization is the ratification of a secret deed that is read aloud by a notary and signed by an appearance in front of a notary at the same time to ensure the accuracy of the deed's date. The signers are recognized by the Notary or introduced to the Notary, then the Notary explains the contents of the deed to the signer or the person who affixes the thumbprint, and the deed is then signed or affixed with the thumbprint by the signer or the person who affixes the thumbprint in front of the Notary. The notary notates the number of the legalization in the legalization registration book. The date of the signature or thumbprint must match the legalization date. For this legalization to be admissible in court, it must be adequately stamped.⁸

According to the provisions of Article 1880 of the Civil Code, underhanded deeds that are not legalized by a Notary or other officials appointed by or based on the laws of Article 1874 and Article 1874 of the Civil Code regarding the date have no force against third parties (*derden*) other than or unless they are legalized by a Notary or other officials appointed by or based on the laws of Article 1874 and Article 1874 an of the Civil Code regarding the date:

⁶ Ira Koesoemawati, dkk., *Notaris, Raih Asa Sukses*. Jakarta: PT. Pradnya Paramita, 2009, p. 23.

⁷ Achmad Ali dan Wiwie Herayani, 2012, *Asas-asas Hukum Pembuktian Perdata*, Kencana Media Group, Jakarta, p. 57

⁸ Sudikno Mertokusumo, 2002, *Hukum Acara Perdata Indonesia*, Edisi Kedelapan, Liberty, Yogyakarta, p.153

- a. Since the day of legalization referred to and recorded according to law or;
- b. Since the day of the death of the signatories concerned, either all or one or;
- c. Since the day it is proven about the existence of the deed under the hand of the deed drawn up by a public employee or;
- d. Since the day it is proven about the existence of the deed under the hand of the deed drawn up by a public employee or;
- e. Since the recognition of the handwritten deed by a third party, the deed has been utilized.

According to Article 1875 of the Civil Code, the material evidentiary strength of private deeds, by the person against whom the deed is used or who can be considered recognized under the law, or who signs the heirs and the people who receive the rights from that person, is irrefutable proof that the deed is genuine. Based on this, the private deed that has been legalized by a Notary has perfect evidentiary force, as the truth is included within the parties' signatures. Therefore, by recognizing the signature, the contents of the deed are regarded as the parties' agreement.

2. Types of Legal Protection for Notaries Authorizing Private Documents

The position of a Notary is highly susceptible to being an easy target for law enforcement. In carrying out his duties, a Notary must always submit to and comply with the Oath of Office, the Notary Code of Ethics (KEN), and the UUJN. Notaries, as public officers, are obligated to provide legal services to the community in order to obtain legal certainty and protection as part of their professional and governmental duties. A notary is a public authority empowered to execute authentic documents that serve as evidence. This authenticated by a notary deed contains all required deeds, agreements, and clauses. It is difficult to accept rationally if a notary is being sued in connection with a deed issued before or by a notary, because the notary's duties consist of drafting a deed wanted by the parties for a specific legal action, and the notary also gives legal advice in compliance with the deed issue. However, what is mentioned in the applicable contract is the express wish and declaration of the parties involved.

Article 66 of the UUJN regulates the legal protection of notaries who are still serving as witnesses, suspects, or defendants. In the interest of the judicial process, the article stipulates that investigators, public prosecutors, and judges who require photocopies of minutes of deeds and/or letters attached to minutes of deeds or notary protocols in the custody of the notary must obtain permission from the Honorary Council. Notary initial. With this UUJN, it is intended that the Notary Honorary Council can give legal protection to all individuals who have performed their obligations as notaries.

Conclusion

1. A private deed's legalization function is to ensure the date and signatures of the parties, and to have the notary explain the terms of the deed so that the signatory cannot contradict the contents of the deed he signed and the people whose names are listed in the statement. A private deed that has been legalized by a notary has complete evidentiary weight because the truth is contained in the parties' signatures. Therefore, by recognizing the signature, the contents of the deed are regarded as the parties' agreement.
2. The formation of a monitoring body in accordance with Article 66 of the UUJN safeguards notaries in their capacity as public servants. If the notary is suspected of committing a breach by creating a document that is harmful to the parties, there is a process and procedure that must be followed before the notary can attend the trial.

Suggestion

1. In exercising their authority, the Notary must constantly pay close attention to the important aspects or criteria, hence it avoids any legal complications.
2. The provisions of Article 66, paragraph 1, of Law Number 2 of 2014 on Amendments to Law Number 30 of 2004 on the Office of a Notary Public should be implemented immediately through a Ministerial Regulation or a Decree of the Minister of Law and Human Rights hence that the position and functions of the Notary Honorary Council are more transparent. The position of the Notary Honorary Council should be at the district or city level hence the institution can swiftly respond to and decide on any arising instances. In addition, processes for appealing the Notary Ethics Council's decision must be established immediately. This is done to give legal protection for Notaries while also allowing parties who disagree with the decision of the Notary Honorary Council to file an appeal.

References

- Achmad Ali dan Wiwie Herayani, *Asas-asas Hukum Pembuktian Perdata*, Jakarta: Kencana Media Group, 2012.
- Ira Koesoemawati, dkk., *Notaris, Raih Asa Sukses*. Jakarta: PT. Pradnya Paramita, 2009.
- Philipus M. Hadjon, *Formulir Pendaftaran Tanah Bukan Akta Autentik*, Surabaya: Surabaya Post, 2001.
- Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Pers, 2001.
- Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1986.
- Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia, Edisi Kedelapan*, Yogyakarta: Liberty, 2002.
- Triashari, dkk., "Analisis Yuridis Akta Di Bawah Tangan Yang Di Waarmeking Dan Di Legalisasi" *Kertha Semaya: Journal Ilmu Hukum*.

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